

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

DELL L. CARTER,

Plaintiff,

v.

MAGISTRATE JUDGE EDWARD HENRY;
RAYFORD ERVIN; FRANK SADLER;
SOLICITOR WILLY THOMPSON; JUDGE
COSTA PLEICONES; JUDGE DERHAM
COLE; HARRY DEST; DIRECTOR DOUG
CATOE; JON OZMINT; WARDEN WILLY
EAGLETON; WARDEN E. RICHARD
BAZZLE; WARDEN RICKIE HARRISON
WARDEN MCCLEADON; LEONDER
BIVENS; GENE ERVIN, Administrator; GWEN
BAXLEY; DOCTOR STUVER; DOCTOR
GASTER; DOCTOR COREY; SADIE C.
HUDSON; DOCTOR DAVID O. BRADY;
THOMAS CALDWELL; JEFFREY
ANDERSON; JIM LYON; JOHN WORKMAN,
JR.; TEDDY MELTON; WILLIAM SHERER;
DANNY STACK; B.T. MCNEELY; SALLY
ELLIOT; TERRY MILLAR; DAVID
TATARSKY; JEAN HOEFER TOAL; DANIEL
SHEARHOUSE; KENNETH A. RICHSTAD;
JOSEPH MCCROREY; TERRY WOOTEN;

Defendants.

Civil Action No.: 0:08-cv-49-RBH

ORDER

Plaintiff, proceeding *pro se*, filed this complaint alleging causes of action under 42 U.S.C. § 1983. Plaintiff is currently incarcerated at Evans Correctional Institution in Bennettsville, South Carolina. This matter is before the court with the Report and Recommendation [Docket Entry #16] of Magistrate Judge Bristow Marchant filed on March 6,

2008.¹

The Magistrate Judge recommended summary dismissal of Plaintiff's complaint pursuant to 28 U.S.C. § 1915(g), also known as the three strike rule of the Prison Litigation Reform Act. On March 17, 2008, Plaintiff timely filed objections to the Magistrate Judge's Report and Recommendation.

Standard of Review

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The court is charged with making a *de novo* determination of those portions of the report and recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to him with instructions. 28 U.S.C. § 636(b)(1).

The district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's report to which objections have been filed. *Id.* However, the district court need not conduct a *de novo* review when a party makes only general and conclusory objections that do not direct the court to a specific error in the Magistrate Judge's proposed findings and recommendations. *Orpiano v. Johnson*, 687 F.2d 44, 47-48 (4th Cir. 1982).

Discussion

Title 28 U.S.C. § 1915(g) provides:

¹ This matter was referred to Magistrate Judge Marchant pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), and Local Civil Rules 73.02(B)(2)(d) and (e).

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

This court agrees with the Magistrate Judge that the Plaintiff has “struck out” under § 1915(g). Plaintiff’s case filing history indicates that, including the instant case, Plaintiff has filed at least 52 civil cases in this District since 1996. As a result of filing either frivolous claims, malicious claims, or claims upon which no relief could be granted, Plaintiff has received 11 strikes under 28 U.S.C. § 1915(g). Because Plaintiff’s claims do not fall within the “serious physical injury” exception to the three strike rule, Plaintiff is barred from proceeding with this lawsuit pursuant to 28 U.S.C. § 1915(g). The court has reviewed Plaintiff’s objections and finds that they are without merit.

Conclusion

For the reasons stated above and by the Magistrate Judge, the court overrules Plaintiff’s objections and adopts and incorporates by reference the Report and Recommendation [Docket Entry #16] of the Magistrate Judge. Accordingly, Plaintiff’s complaint is hereby **DISMISSED without prejudice** and without issuance and service of process. All other pending motions are hereby rendered MOOT.

IT IS SO ORDERED.

April 30, 2008
Florence, South Carolina

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge